



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-9117

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211437.

The Houston Police Department (the "department") received a request for five specific offense reports and for information related to an incident that occurred at a specified address in July, 1982. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to the request for information related to an incident that occurred at a specified address in July, 1982. We assume the department has released this information to the requestor. If it has not, it must do so at this time to the extent that such information existed on the date the department received the request. See Gov't Code §§ 552.301(a), .302.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (c). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You inform us that Exhibits 5 and 6 relate to an inactive criminal investigations. You also inform us, however, that these exhibits relate to cases in which the statute of limitations has not run and that the department's investigations may be reactivated once additional leads are developed. You assert that the release of information that relates to these cases would interfere with the detection and investigation of crime. Based on your representations, we find that you have established that release of Exhibits 5 and 6 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You also inform us that Exhibits 2, 3 and 4 pertain to criminal investigations, each of which concluded in a result other than conviction or deferred adjudication. These exhibits are therefore subject to section 552.108(a)(2).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Front page offense report information includes the identity and description of the complainant and a detailed description of the offense. *See* ORD 127 at 4.

You contend that some of the basic information in Exhibits 2 and 3, as well as some additional information in Exhibits 4 and 5, must be withheld under section 552.101 in conjunction with the common law right to privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either

constitutional, statutory, or by judicial decision.” This provision encompasses information protected by common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy.

In this instance you contend that the victim’s identifying information and certain details regarding the sexual assault should be withheld on the basis of common law privacy. We agree that information that would identify the victim must be withheld under section 552.101 and common law privacy. However, if references to the victim’s identity are redacted, the release of details regarding the incident would not implicate the privacy rights of this individual. Therefore, only the victim’s identifying information must be withheld under section 552.101 on the basis of common law privacy. We have marked some additional basic information in Exhibits 4 and 5 that also must be withheld under section 552.101 in conjunction with common law privacy. The department must release the remaining basic information from all five offense reports to the requestor.<sup>1</sup>

In summary, other than basic information, Exhibits 2, 3, 4, 5 and 6 may be withheld pursuant to section 552.108. Identifying information of a sexual assault victim, plus the information we have marked in Exhibits 4 and 5, must be withheld under section 552.101 and common law privacy. All other basic information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>1</sup>Because basic information described in *Houston Chronicle* does not include information covered by section 552.130, we do not consider your arguments concerning that exception.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal line extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 211437

Enc. Submitted documents

c: Ms. Rosa Benata Nelson  
768 Lovers Lane  
Houston, Texas 77091  
(w/o enclosures)